As regards the costs of this application, it seems to me proper that the costs of the parties to be taxed as between solicitor and client should be paid out of the corpus of the estate.

Order accordingly.

Solicitors for the Plaintiff (Applicant)—*Rodyk & Davidson.*

Solicitors for the Defendants (Respondents) *Allen & Gledhill.*

[ORIGINAL CIVIL JURISDICTION]

GERAHTY, J.

April 13, 1934.

TAN CHEW WAH.....Plaintiff.

vs.

TEO KANG SWEE.....Defendant.

[SINGAPORE SUIT No. 101 of 1934]

Practice—Writ—Incorrect Statement of Defendant's Address—Whether Material Defect—Civil Procedure Code, S. 1340.

By the Writ of Summons issued and served upon him personally in Singapore the defendant was incorrectly described as of No. 704, Serangoon Road Singapore whereas he resided at Pontian Ketchil in Johore. It was admitted on behalf of the Plaintiff that the defendant had a residence at Pontian Ketchil but the evidence disclosed that the defendant had also a place of address at No. 704 Serangoon Road, Singapore, at which he resided from time to time. Judgment by default was entered against the defendant and a bankruptcy notice issued and served upon him. Thereafter the defendant applied to set aside the writ on the ground that the address stated in the writ was incorrect and fictitious.

Held, that the incorrect statement of the defendant's address was not in the circumstances material and did not vitiate the writ.

Held further, that the application had not been made within a reasonable time in accordance with the provisions of section 1340 of the Civil Procedure Code.

Application made by way of Summons in Chambers on behalf of the defendant to set aside a writ of summons on the ground that the address of the defendant was incorrectly stated in the writ.

The facts and argument appear sufficiently from the judgment below.

Paul Storr for the Defendant (Applicant).

Fung for the Plaintiff (Respondent).

Cur. Ad. Vult.

GERAHTY, J.—This is an application by way of summons in Chambers dated the 26th day of March, 1934, on the part of the defendant in Suit No. 101 of 1934 for an order that the Writ of Summons in the action and all subsequent proceedings be set aside for irregularity on the ground that the defendant's address mentioned in the Writ of Summons is incorrect and fictitious and was known to the plaintiff to be fictitious and incorrect and not the address of the residence of the defendant.

The Writ of Summons is dated the 22nd February, 1934, by which the plaintiff claimed $3,111 being principal and interest due on two promissory notes. It is addressed to Teo Kang Swee of No. 704 Serangoon Road, Singapore. A copy of the Writ was served upon the defendant personally at No. 4, Raffles Place, Singapore, on the 28th February.

On the Writ appears an endorsement by the defendant to the effect that he lives at Pontian, Johore.

The defendant not having appeared, final judgment was entered for the plaintiff on the 10th March, 1934.

On the 15th March, 1934, a Bankruptcy Notice was issued in respect of the said judgment.

The application is supported by an affidavit of the defendant which sets out, *inter alia*, that he has never resided at No. 704 Serangoon Road, Singapore, which is the address of his brother Teo Kang Tee; that previous to April, 1933, he had resided at No. 122, Chin Swee Road, Singapore, and that since that date he has lived at Pontian Ketchil, Johore, and still lives there. Further that the plaintiff is well aware that he lives, and that his address is, at Pontian Ketchil, Johore, and that such is shown by correspondence with the plaintiff and in particular by a letter dated 5th September, 1933, in which the defendant informed the plaintiff that he did not live at No. 704, Serangoon Road, Singapore.

The letter in question contains the following passage:—

> "I do not stay at No. 704 Serangoon Road, Singapore, and only visit there 3 or 4 days in a month, and most of my time is spent in Pontian Ketchil, Benut and Batu Pahat where I am trying to get into business."

The defendant was cross-examined on his affidavit, from which it appears that he has since June last lived at Pontian Ketchil with his wife and 3 children; that he has 3 children living with his brother at 704 Serangoon Road, who are staying there while undergoing their education in Singapore. It appears that last year he visited No. 704, Serangoon Road from time to time and that he has received letters addressed there which are in the ordinary course re-directed to Pontian Ketchil from that address. He further testifies that the rent of No. 704 Serangoon Road is paid by his brother.

The plaintiff has filed an affidavit in which he denies that he deliberately, in order to evade the Rules of this Court, put the address of the defendant as in the jurisdiction of the Court.

He alleges that in fact the defendant has been and is residing at No. 704, Serangoon Road, and that Pontian Ketchil, Johore, is merely the defendant's temporary business address only; that at the end of January, 1934, when he intended to take proceedings against the defendant, he made enquiries and confirmed the fact that the defendant has been and was really residing at No. 704, Serangoon Road when that address was put in the Writ of Summons. Further that judgment was obtained against the defendant in

another suit (No. 521 of 1933), the defendant's address being given in that action as No. 704, Serangoon Road, which was served on the defendant within the jurisdiction of this Court, and that in that case the defendant made no allegation that he was not residing within the jurisdiction of the Court.

At the hearing of the Summons Mr. Fung for the plaintiff admitted that the defendant had a residence at Pontian Ketchil but that the evidence disclosed that the defendant had also a place of address at No. 704, Serangoon Road, at which he resided from time to time. It is contended that the plaintiff believed that the defendant resided there further that the defendant has not moved to set aside the Writ within a reasonable time, that he should have moved at once after accepting service, and that he did not take this step until he was served with a bankruptcy notice, and that in any event there are no merits in this application and that the defendant has never alleged that he has a good defence to the action.

Mr. Storr for the defendant contends that this is not a mere irregularity but is one which goes to the root of the Writ that the correspondence shows that the plaintiff knew that No. 704, Serangoon Road, Singapore, was not the defendant's address and that he must have put that address in deliberately to avoid the necessity of proceeding under section 105 of the Civil Procedure Code.

In support of these contentions the following cases were cited:—*Clokey* v. *L. & N. W. Railway Co.*, 1905, 2 I.R. p. 251 and *The W. A. Sholten*, 15 P.D. 8. In my opinion the former case is distinguishable from this case in that an address known to be false was inserted in the Writ for the purpose of obtaining that to which the plaintiff was not entitled—a trial in Ireland. The High Court in Ireland had no jurisdiction over the subject-matter of the suit. Here there is no question as to the jurisdiction of the Court over the subject-matter of the suit, i.e., a claim on two promissory notes made in Singapore.

Similarly in the latter case the address of the defendants, a foreign corporation, was found to have been purposely omitted and it was held that, having regard to Order II r. 3, the omission was material and that the writ was invalid. In my opinion this case also is not applicable to the matter in issue.

On the evidence before me I am satisfied that while the principal place of residence of the defendant at the material time was at Pontian Ketchil, Johore, his association with the address given in the Writ at 704, Serangoon Road was sufficient for the purpose of identification. In my view the evidence does not support the allegation that the plaintiff inserted this address deliberately in an endeavour to evade the rules of this Court.

Further the defendant was served personally in Singapore and in my opinion he cannot be said to have been in any way misled or prejudiced.

The case of *Smith* v. *Hammond*, (1896) 1 Q.B. 571 seems to me to be directly in point. In that case the defendant was incorrectly described as of Lytham in the county of Lancaster whereas his only place of business and address was at Londonderry in Ireland, and it was held, on an application to set aside the writ of summons, that the incorrect statement of the defendant's address did not vitiate the writ and it was good.

On the authority of this case and for the reasons indicated above I am of opinion that this application must fail.

Apart from this I am of opinion that the defendant must fail on a further point, namely that this application has not been made within a reasonable time in accordance with section 1340 of the Civil Procedure Code. He was served personally with the writ of summons; beyond endorsing it as mentioned earlier, he does nothing in the matter until he is served with a bankruptcy notice on a judgment which he has allowed to be entered against him by default. It is true that the various steps in this suit were taken with a remarkable rapidity, but I take the view that the defendant had ample time between service of the writ upon him and judgment thereon to make the present application.

For these reasons the application must be dismissed with costs to be taxed.

Application dismissed.

Solicitors for the Plaintiff—*S. Fung.*

Solicitors for the Defendant—*Drew & Napier*

[ORIGINAL CIVIL JURISDICTION]

MILLS, J.

[APPELLATE JURISDICTION]

HUGGARD, C.J., THOMAS, C.J. (F.M.S.) & GERAHTY, J.

November 14, 1933.

ALUS BINTE BAKAR

v.

TAHAR BIN HAJI HASSAN.

[MALACCA CIVIL SUIT No. 74 of 1933]

[SINGAPORE CIVIL APPEAL No. 17 of 1933]

Interpretation of word "Grant."

Observations on the meaning of the word "grant" when used by Malay inhabitants of the Settlement of Malacca having no thorough knowledge of the English language.

Trial of Action.

Veerasamy for the Plaintiff.

S. G. Pillay for the Defendant.

Cur. Ad. Vult.

MILLS, J.—The plaintiff and the defendant on 16th January, 1930, signed an agreement whereby the plaintiff agreed to sell and the defendant agreed to buy 4 pieces of land, each of 2,000 square feet, for $3,800, the final payment of $3,000 to be made "on completion of transferring the E.M.R. into grant and name."

The plaintiff has surrendered her previous titles and has obtained from the Government four 99-year leases: she claims specific performance of the agreement or damages for its breach.

The defendant refuses to perform the agreement because he says the plaintiff agreed to transfer Statutory Grants, and he is not willing to accept 99-year leases.

The case turns on the meaning of the word "grant" in the phrase above quoted.